



BRB No. 18-0309 BLA
Case No. 2013-BLA-05839

MELYNDIA ANN BRYAN)
(Widow of BERT FOWLER BRYAN))

Claimant-Respondent)

v.)

ISLAND CREEK COAL COMPANY)

and)

WELLS FARGO DISABILITY)
MANAGEMENT)

Employer/Carrier-)
Petitioners)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED: 08/17/2018

ORDER on
RECONSIDERATION

As no member of the panel has voted to vacate or modify the decision herein, the

motion for reconsideration filed by employer is DENIED.¹ 33 U.S.C. §921(b)(5); 20 C.F.R. §§801.301(b); 802.407(a); 802.409.

HALL, Chief

BETTY JEAN

Administrative Appeals Judge

RYAN GILLIGAN

Administrative Appeals Judge

ROLFE

JONATHAN

Administrative Appeals Judge

¹ Employer argues for the first time on reconsideration that the manner in which Department of Labor administrative law judges are appointed violates the Appointments Clause of the Constitution, Art. II § 2, cl. 2. Employer’s Motion for Reconsideration at 3-6. The Director, Office of Workers’ Compensation Programs (the Director), responds that employer waived this argument by failing to raise it in its opening brief. The Board hereby accepts the Director’s late-filed response as part of the record. We agree with the Director. Because employer first raised the Appointments Clause issue only after the Board issued its decision affirming the administrative law judge’s award of benefits in the survivor’s claim, employer waived the issue. *See Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018) (requiring “a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party’s] case”); *see also Williams v. Humphreys Enters., Inc.*, 19 BLR 1-111, 1-114 (1995) (the Board generally will not consider new issues raised by the petitioner after it has filed its brief identifying the issues to be considered on appeal); *Senick v. Keystone Coal Mining Co.*, 5 BLR 1-395, 1-398 (1982). Additionally, the Board denies employer’s requests for en banc reconsideration and for oral argument.